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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,638	11/12/2003	Amit V. Patel	911	7888
7590	07/03/2007		EXAMINER	
Amit V. Patel 2289 Willoway Street Yorktown Heights, NY 10598			JACKSON, BRANDON LEE	
		ART UNIT	PAPER NUMBER	
		3772		
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		07/03/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/706,638	PATEL, AMIT V.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brandon Jackson	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 May 2007.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5 and 7-23 is/are pending in the application.
- 4a) Of the above claim(s) 13-23 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 and 7-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

This action is in response to amendments/arguments filed 5/16/2007. Currently claims 1-5 and 7-23 are pending in the instant application, claim 6 has been canceled.

#### ***Election/Restrictions***

The election of Species I drawn to claims 1-12 was confirmed in reply filed 5/16/2007.

This application contains claims 13-23 are drawn to an invention nonelected with traverse in the reply filed on 5/16/2007. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

#### ***Response to Arguments***

The amendment to claim 1 does not put the instant application in condition for allowance. The amendment is not sufficient to overcome the Maddox reference. The reasons are disclosed in the rejection below.

#### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "compressible padding" and "hook and fastener" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Maddox (U.S. Patent 1,340,630). Maddox discloses an apparatus (fig. 1) for

immobilizing an injured joint of the body comprising a first plate (35) adapted for engaging limb of the body and having an end portion. A second plate (12) adapted for engaging a body part to which the limb is connected via a joint, the second plate having an end portion. The first and second plates (35, 12) are contoured to receive a body part. A lockable joint (24, 26) connecting the first and second plates, which is a pivotable hinge having a locking mechanism (27, 28) for locking the hinge at desired orientations. The apparatus discloses at least one securing mechanism (47) attached to the first plate (35) and comprising a strap (47); and a second securing mechanism (16) attached to the second plate (12) and comprising a strap (16). The apparatus comprises compressible padding (36) attached to a concave surface of the first plate (35); and compressible padding (14) attached to a concave surface of the second plate (12). The apparatus has at least one securing mechanism comprising a strap (47) and fastener (18), of which the fastener comprises a hook and loop fastener. In view of the applicant's specifications, page 8, lines 19-21, the buckle (18) is seen to be equivalent to the hook and loop fastener. The first and second plates (35, 12) are capable of flexing into a concave orientation (fig. 2). Therefore, the term "capable" has been given its broadest, most reasonable interpretation and the device is capable of being concave. Further, being "capable" is a recitation of a function and is not a positive limitation but only requires the ability to perform. It does not constitute a limitation in any patentable sense. The first plate (35) apparatus is capable of being disassembled from the second plate (12). The wing nut (28) is capable of being removed, which will allow the screw (27) to be removed and the first plate (35) to be removed from the second plate (12).

Therefore, the term "capable" has been given its broadest, most reasonable interpretation and the device is capable of being disassembled. Further, being "capable" is a recitation of a function and is not a positive limitation but only requires the ability to perform. It does not constitute a limitation in any patentable sense. The first and second plates (35, 12) are connected to rods (30, 11) that have ends and are adjustable (col. 2, lines 70-97).

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon Jackson whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brandon Jackson  
Examiner  
Art Unit 3772

BLJ

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